



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 24, 1998

Mr. Alberto J. Peña
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR98-0789

Dear Mr. Peña:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114301.

The San Antonio Police department (the "department") received a request for information concerning the use of pepper spray by department officers. You assert that the requested information is excepted from required public release by section 552.108 of the Government Code.

Section 552.108 of the Government Code reads in relevant part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

...

You argue that

the release of this information would interfere with law enforcement as knowledge of this material would place an individual at a advantage in confrontations with police officers and increase their chances of evading arrest or injuring the officer. Situations in which police officers need to resort to any force, including an intermediate force as pepper spray, are unpredictable. If criminals have advance knowledge of the type of conduct an officer must tolerate before using pepper spray, the debilitating effect of the spray and the action an officer is expected to take in using the spray, he may be able to avoid or minimize the effect of the spray placing himself in an advantageous position to attack the officer or evade apprehension.

We have considered your arguments and reviewed the information at issue. We conclude that the department may not withhold the following information from the requestor based on section 552.108 of the Government Code: the document titled "Inservice 1998 Oleoresin Capsicum," portions of the Texas Commission on Law Enforcement Officer Standards and Education Lesson Plan and pages 3, 4, 5, 8, 17 and 18 and the table of contents from the Aerosol Operation Guide. The department may withhold the remaining information from the requestor based on section 552.108.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 114301

Enclosures: Submitted documents

cc: Mr. Raul M. Sanchez
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(w/o enclosures)